UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/12
20 January 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 8 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Joint written statement submitted by the American Jewish Committee and the World Jewish Congress, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 December 1999]

GE.00-10316 (E)

Introduction

1. The Commission on Human Rights has promoted human rights longer than any other United Nations forum. In 1967, the Commission on Human Rights shifted its focus to examine allegations of human rights violations; it has created a number of procedures to monitor human rights compliance worldwide. Among the most important of these mechanisms is the appointment of special rapporteurs to investigate potential human rights abuses. These special rapporteurs report their findings publicly and offer recommendations, helping to extend the shield of human rights where needed.

2. However, the Commission's approach to Israel's human rights record is punitive and anachronistic. For its part, it overlooks the changing realties in Israel and the occupied territories resulting from the bilateral peace process. Since 1993, living conditions of Palestinians in the territories have improved, and Israel has transferred much power to the Palestinian Authority:

- GDP, employment and income in Palestinian Authority self-rule areas have increased; [1]
- The Palestinian Authority oversees education, health, social welfare, taxation, the judiciary, prisons and the police, among other responsibilities;
- Pursuant to peace agreements, Israel has opened a "safe passage" linking Palestinian Authority self-rule areas; [2]
- The "centre of life" policy governing residency in Jerusalem has been liberalized. [3]

Yet real improvements are not reflected in the Commission's antiquated and prejudicial treatment of Israel.

3. There are two significant problems in the way the Commission deals with Israel:

(a) The mandate of the Special Rapporteur on the Palestinian territories is biased and outdated;

(b) The Commission's agenda unfairly singles out one member State for special consideration.

These two issues result in the violation of the Charter of the United Nations.

The mandate of the Special Rapporteur on the Palestinian territories is biased and outdated

4. In 1993, the Commission on Human Rights adopted resolution 1993/2 A, entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine". It called for the appointment of a special rapporteur "to investigate Israel's violations of the principles and bases of international law, international humanitarian law ... in the Palestinian

territories occupied by Israel since 1967". This investigation will continue "until the end of the Israeli occupation of those territories". [4] Two special rapporteurs have undertaken this mandate, and both have resigned their commission. [5]

Violation of the Charter of the United Nations

5. The unique mandate of the Special Rapporteur for the territories violates Article 2 of the Charter, which states: "The Organization is based on the principle of the sovereign equality of all its Members." [6]

6. The mandate is sui generis; it alone, among country-specific mandates, is open-ended. All other special rapporteur mandates are renewed periodically, thereby reflecting changes in circumstances on the ground. That the mandate of the Special Rapporteur for the territories is open-ended highlights the prejudicial manner under which this Special Rapporteur functions. This demeans the office of the Special Rapporteur, and violates principles of member State equality.

7. The mandate of the Special Rapporteur presupposes Israel's abuses. To conclude a country has violated human rights before uncovering evidence is to deny that country due process and procedural fairness. Thus, the biased mandate results in the unequal treatment of Israel before the Commission, and the United Nations.

Limited human rights protection in the territories

8. The Special Rapporteur is not mandated to investigate all human rights abuses in the territories, weakening the circle of protection the United Nations is able to extend to Palestinians in the territories, the very people the mandate purportedly seeks to protect.

9. Yet, according to the Special Rapporteur, one of the four principal reasons for Palestinian suffering is "violations perpetrated by the Palestinian Authority". [7] Given the current mandate, the Special Rapporteur's inability to raise the alarm on all violations in the territories leaves many occupants unprotected. This distressing reality has been pointed out to the Commission: "It has been the consistent view of the Special Rapporteur that the mandate has to be reviewed. The only reason for amending the mandate is the respect for human rights; the Special Rapporteur has to have a sufficiently broad mandate to contribute to achieving that goal." [8]

10. That responsibility for human rights abuses lies with the Palestinian Authority is indisputable. Reports by Amnesty International, Human Rights Watch, and the United States Department of State cite consistent instances of arbitrary detention, unfair judicial process, torture, and press censorship. [9] According to Amnesty International, more than 500 political detainees remain under Palestinian Authority detention without charge or trial. [10] Yet the Commission's Special Rapporteur is not mandated to investigate these abuses, compromising the Commission's ability to protect human rights.

The Commission's agenda unfairly singles out one member State for special consideration

11. "The question of the violation of human rights in the occupied Arab territories, including Palestine" continues to be considered under a separate Commission agenda item from all the human rights tragedies in the rest of the world - another example of Israel's sui generis status before the Commission.

12. The very construction of the agenda singles out one member State for special condemnation - thus abridging that Member's equality and due process rights under the Charter. As the Special Rapporteur himself has stated: "In the interest of achieving substantive improvement of the human rights situation, it is not conceivable to separate the item from other relevant subsequent items on the agenda. This is, undoubtedly, at the same time a question of principle." [11]

13. The Commission has rightfully attempted to restructure its agenda, yet the problem surrounding Israel's treatment persists. The departure from procedural fairness in examining Israel under a separate agenda item undermines the Commission's legitimacy in examining all human rights violations.

Conclusion

14. The protection of human rights will always entail a political dimension. Human rights are, after all, a question of State behaviour. But if the Commission on Human Rights is to enjoy credibility and legitimacy, it must ensure its procedures are not abused for political ends.

15. Thus: when the Commission agenda singles out only one State for special consideration; when only one Special Rapporteur has a mandate that is not regularly renewed; when that Special Rapporteur is told to ignore a recognized source of human rights violations; when an entire series of Commission resolutions fails to account for substantive and verifiable advances in a peace process; when all these situations prevail – as they now do – then it is fair to ask whether or not the Commission has crossed the threshold of acceptable politicization. Only the Commission can put its own house in order.

Notes

[1] Assistance to the Palestinian people: Report of the Secretary-General (A/54/134), paras. 11-20.

[2] Protocol Concerning Safe Passage between the West Bank and the Gaza Strip, signed by the Government of the State of Israel and the Palestine Liberation Organization, 5 October 1999.

[3] Human Rights Watch, Israel, the Occupied West Bank & Gaza Strip, and Palestinian Authority Territories, December 1999.

[4] Commission on Human Rights, resolution 1993/2 A, para. 4.

[5] Mr. René Felber (Switzerland), 1993-1995, Mr. Hannu Halinen (Finland), 1995-1999.

[6] Charter of the United Nations, Article 2, para. 1.

[7] Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Hannu Halinen, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A (E/CN.4/1998/17), para. 65.

[8] Ibid., para. 73.

[9] Amnesty International, Annual Report 1999: Palestinian Authority, December 1999, Human Rights Watch, Israel, the Occupied West Bank & Gaza Strip, and Palestinian Authority Territories, December 1999; United States Department of State, The Occupied Territories Country Report on Human Rights Practices for 1998, February 1999.

[10] Amnesty International, ibid.

[11] Report on the situation of human rights in the Palestinian territories occupied since 1967, op. cit., para. 79.